Supreme Court, U. S.
FILED
NOV 28 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-639

LOUIS A. GENTILE ET AL., APPELLANTS

v.

PAUL B. ALTERMATT, ET AL., APPELLEES

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS OR AFFIRM PURSUANT TO RULE 16 OF THE REVISED RULES OF THE SUPREME COURT

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November 24, 1975

LEDGER PRESS, PRINTERS, HARTFORD

INDEX

Page

MOTION TO DISMISS OR AFFIRM PURSUANT TO RULE 16 OF THE REVISED RULES OF THE SUPREME COURT 1

STATEMENT OF THE CASE 2

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND SHOULD BE DISMISSED OR THE JUDGMENT AFFIRMED FOR REASONS STATED IN THE MOTION 3

A. REASONABLE ALTERNATIVES TO EXISTING COMMON LAW CAUSES AND FORMS OF ACTION 3

B. NO EQUAL PROTECTION VIOLATION 10

C. JURY TRIAL 12

D. MANDATORY SECURITY 13

E. FIFTH AMENDMENT CONSIDERATIONS .. 16

CONCLUSION 16

CERTIFICATE OF SERVICE 17

TABLE OF CITATIONS

CASES: *Page*

Jacobs v. *Swift & Co.*, 141 Conn. 276, 279 (1954) 6

Lochner v. *New York*, 198 U.S. 45 (1905) 9

Louisville Gas & Electric Co. v. *Coleman*, 277 U.S. 32, 41 (1928) 10

McDonald v. *Board of Election Commissioners*, 394 U.S. 802, 808-809 (1969) 11

Metropolis Theatre Co. v. *Chicago*, 228 U.S. 61, 69-70 (1913) 11

Mountain Timber Co. v. *Washington*, 243 U.S. 219, 235 (1916) 13-14

Munn v. *Illinois*, 94 U.S. 113, 134 (1871) 4

New York Central R.R. Co. v. *White*, 243 U.S. 188 (1916) 6-14

Pinnick v. *Cleary*, 360 Mass. 1, 271 N.E. 2d 592 (1971) 5

Reed v. *Reed*, 404 U.S. 71 (1971) 10

Verilli v. *Damilowski*, 140 Conn. 358, 360 (1953) 5

COURT RULES, STATUTES AND CONSTITUTIONAL PROVISIONS:

Rule 16, Revised Rules of the Supreme Court 1

Article First, § 10, *Connecticut Constitution* 3

Public Act 273 (1972) codified as §§ 38-319 through 38-351a, General Statutes inclusive 2

Page

P.A. 90-313 2

1971 Special Act No. 143 2

TEXTS:

Wright and Fitzgerald, *Connecticut Law of Torts* (2d ed. 1968) 6

GOVERNMENTAL STUDIES:

Motor Vehicle Crash Losses and Their Compensation in the United States 2

Report of the Commission to Study a State Program of Restricted Motor Vehicle Insurance 2

United State Department of Transportation Automobile Insurance and Compensation Study 2

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The Appellees, who are the Insurance Commissioner of the State of Connecticut and other state officials,[1] respectfully move, pursuant to Rule 16 of the Revised Rules of the Supreme Court, to dismiss the appeal and, in the alternative, to affirm the judgment below on the grounds that: (a) it does not present a substantial federal question; (b) it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument; and (c) the issues concerning "no fault" insurance for motor vehicle accidents and the statutory revisions of the law of negligence, center largely around an interpretation of the Constitution of

[1]The original defendant-appellees represented by the Attorney General's office were Paul B. Altermatt, Insurance Commissioner; Robert I. Berdon, State Treasurer; Nathan G. Agostinelli, State Comptroller; and Adolf G. Carlson, Commissioner of Finance and Control. These individuals have all since been replaced.

the State of Connecticut, Article First, § 10, with the Federal constitutional provisions only secondarily involved.

STATEMENT OF THE CASE

This is an appeal from the decision of the Supreme Court of the State of Connecticut sustaining the constitutionality of the state No-Fault Motor Vehicle Insurance Act, 1972 Public Acts, No. 273.[2] A declaratory judgment was rendered accordingly. The Act was based upon numerous legislative and administrative studies of both the federal and state governments as well as the private sector, including the *United States Department of Transportation Automobile Insurance and Compensation Study,* commissioned by Public Act 90-313, summarized in *Motor Vehicle Crash Losses and Their Compensation in the United States,* A Report to Congress and the President, March 1971 (Stipulation Exhibit G) and the Connecticut *Report of the Commission to Study a State Program of Restricted Motor Vehicle Insurance,* commissioned by 1971 Connecticut Special Act No. 143 (Stipulation Exhibit E). The state commission included the Insurance Commissioner, Motor Vehicles Commissioner, members of the Judiciary and Insurance Committees of the State Senate and House of Representatives, members of the Bar, individual legislators of both parties, experts from the field of insurance and representatives from the general public.

In summary, the Act provides that benefits are to be paid, without regard to fault, and without the necessity of filing a law suit, for certain personal injuries and economic loss suffered as a result of automobile accidents. In return, owners of private automobiles must provide security for these payments as well as residual liability. Civil actions are retained for cases where the insured suffers death, permanent injury, fracture of any

[2]Since codified as §§ 38-319 through 38-351a, General Statutes, inclusive, hereinafter referred to as "the Act."

bone, permanent significant disfigurement, permanent loss of any bodily function, or allowable expense in excess of $400.

The balance of the proceedings and remaining background in this case are adequately set forth in the opinion of the State Supreme Court, Jurisdictional Statement, pp. 1A-41A, as well as the brief of the co-defendant-appellees, and will not be repeated.

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND SHOULD BE DISMISSED OR THE JUDGMENT AFFIRMED FOR REASONS STATED IN THE MOTION.

This case involves essentially an interpretation of the State Constitution, Article First, § 10, and the statutory revisions of the law of negligence contained in the Act. The thrust of the appellants' attack in the court below was on state constitutional and common law grounds. Federal constitutional provisions were only indirectly involved. Furthermore, the decision of the State Supreme Court is correct on its face and fails to disclose any substantial federal question so as to justify plenary consideration by this Court. This is abundantly clear from even a quick review of the issues. These concern reasonable alternatives to the common law cause of action, different treatment of different classes, mandatory security and the accident reporting requirements. We will discuss these points briefly.

A. REASONABLE ALTERNATIVES TO EXISTING COMMON LAW CAUSES AND FORMS OF ACTION.

The appellants strenuously object to those portions of the Act which limit the need to pursue an independent civil action in order to recover general and special damages where medical expenses are less than $400. Their argument overlooks the fundamental object of government. A government involves a social compact by which the people covenant with each other that all shall be governed by certain laws for the common good. It

is an inherent attribute of any sovereign government to enact those laws necessary to that end. And with the power to enact laws is the concomitant power to revise and alter them as deemed necessary from time to time. No group, no matter how well organized or vocal, has a right to demand that a certain rule be immutably preserved in cold storage for perpetuity. Rules are not guaranteed eternal existence for no better reason than they may bear the imprimatur of antiquity or that they were once the exclusive order of the day. Indeed, the viability of any government in a civilized society depends on quite different propositions. As stated by this Court in *Munn* v. *Illinois*, 94 U.S. 113 at 134 (1871):

> " 'A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances.'
>
> • • • • •
>
> "We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by Legislatures the people must resort to the polls, not to the courts."

In the present case, the rule of law which was changed involved a redefinition of the legal injury resulting from automobile accidents. Justification for this change may be summarized by the following conditions found to have existed by the court below under the old system: 1) court congestion; 2) high cost of automobile insurance; 3) delay in the administration of justice; 4) inequitable results leading to both under-compensation and over-compensation of claims; 5) specious and exaggerated claims, as found by the Massachusetts Supreme Judicial Court in upholding its no-fault law in *Pinnick* v. *Cleary*, 360 Mass. 1, 271 N.E. 2d 592 (1971).

The revisions undertaken by the Connecticut Act constitute no major upheaval in the law of torts. In the last century, new concepts of tort liability have arisen. The principle of fault has been gradually replaced in many areas by that of "social misconduct." *See* Wright and Fitzgerald, *Connecticut Law of Torts* (2d ed. 1968) § 1 at p. 1. Connecticut courts have on many occasions applied the " 'ancient common law principle, that where one of two innocent persons must suffer loss from an act done, it is just that it should fall on the one who caused the loss rather than upon the other who had no agency in producing it and could not by any means have avoided it.' " *Verilli* v. *Damilowski*, 140 Conn. 358, 360 (1953). The effect of this rule has been to eliminate as triable issues a number of defenses relating to fault. Examples of the application of no-fault at least on a limited basis in civil law include: the non-natural use of land, ultrahazardous activities, vicarious liability, (including the family car doctrine), absolute nuisance, monopolies and combination in restraint of trade, implied warranty under the Uniform Commercial Code and misrepresentation. In no area, perhaps, has the principle of no-fault liability had greater application than in the case of motor vehicles operating upon the public highways. The unexcused violation of a statute may be negligence per se, even though reasonable prudence was employed.

> "[T]he violation of a statute designed for the protection of the public is in itself negligence irrespective of whether

the conduct which constitutes the violation is that of a reasonably prudent person."

Jacobs v. *Swift & Co.*, 141 Conn. 276, 279 (1954).

Such statutes, which cover everything from speed to directions by police officers need not be detailed here.[3] In all these areas, however, negligence as a triable issue has either been reduced or eliminated.[4] It has been but a moderate transition to develop the concept of no-fault further. The object now is to provide ready compensation on an equitable, uniform and efficient basis for relatively minor claims under the Act.

The justification offered for the Act is not altogether unlike that provided for workmen's compensation legislation. In upholding the latter, this Court observed in *New York Central R. R. Co.* v. *White*, 243 U.S. 188 (1916):

"In support of the legislation, it is said that the whole common-law doctrine of employer's liability for negligence, with its defenses of contributory negligence, fellow-servant's negligence, and assumption of risk, is based upon fictions, and is inapplicable to modern conditions of employment; that in the highly organized and hazardous industries of the present day the causes of accident are often so obscure and complex that in a material proportion of cases it is impossible by any method correctly to ascertain the facts necessary to form an accurate judgment, and in a still larger proportion the expense and delay required for such ascertainment amount in effect to a defeat of justice; that under the present system the injured workman is left to bear the greater part of industrial

[3]*See generally*, Wright and Fitzgerald, *supra*, Ch. XIII.

[4]Indeed, the common law definition of negligence itself is not without it variations, including forseeability as a test of causation and the issue of comparative negligence. *See*, e.g., Wright and Fitzgerald, *supra*, §§ 33, 40.

accident loss, which because of his limited income he is unable to sustain, so that he and those dependent upon him are overcome by poverty and frequently become a burden upon public or private charity; and that litigation is unduly costly and tedious, encouraging corrupt practices and arousing antagonisms between employers and employees."

243 U.S. at 197.

To the contention that the statute unconstitutionally departed from common law rules of conduct, Mr. Justice Pitney replied:

"The common law bases the employer's liability for injuries to the employee upon the ground of negligence; but negligence is merely the disregard of some duty imposed by law; and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence. Indeed, liability may be imposed for the consequences of a failure to comply with a statutory duty, irrespective of negligence in the ordinary sense; safety appliance acts being a familiar instance. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U.S. 281, 295; *Texas & Pacific Ry. Co.* v. *Rigsby*, 241 U.S. 33, 39, 43."

243 U.S. at 198.

Common law standards of assumption of the risk and the fellow servant rule were not to be enshrined as unalterable.

"Plainly, these rules, as guides of conduct and tests of liability, are subject to change in the exercise of the sovereign authority of the State."

243 U.S. at 200.

The Court recognized that a state could not abolish all rights of action without replacing them with something adequate. A reasonably just substitute had to be provided. The Court held that the workmen's compensation system constituted such a substitute.

> "The statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the employer's negligence, he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages."
>
> 243 U.S. at 201.

> "We have said enough to demonstrate that, in such an adjustment, the particular rules of the common law affecting the subject-matter are not placed by the Fourteenth Amendment beyond the reach of the law making power of the State; . . ."
>
> 243 U.S. at 202.

In reviewing the plan of compensation and the manner of providing security, the Court found the act neither arbitrary nor unreasonable from the standjoint of natural justice. As to the familiar arguments against no-fault liability, the Court stated:

> "Much emphasis is laid upon the criticism that the act creates liability without fault. This is sufficiently answered by what has been said, but we may add that liability without fault is not a novelty in the law. The common-law liability of the carrier, of the inn-keeper, of him who employed fire or other dangerous agency or harbored a mischievous animal, was not dependent altogether upon questions of fault or negligence. Statutes imposing liability without fault have been sustained. *St. Louis & San Francisco Ry. Co.* v. *Mathews*, 165 U.S. 1, 22; *Chicago, Rock Island and Pacific Ry. Co.* v. *Zernecke*, 183 U.S. 582, 586."
>
> 243 U.S. at 204.

In the present case there are comparable justifications for the Connecticut act. Modern communications and the organization of present day society and commerce have made the private automobile a virtual necessity for broad sectors of the public. The performance capabilities of today's motor vehicles and the system of high speed, limited access expressways and other transportation networks have brought with them their inevitable hazards, cutting across all levels of our population. Public confidence in the administration of justice and one's own sense of equity demand that the resulting personal injuries and damages be compensated effectively and fairly. It is well within the permissible limits of state action to redefine the legal rights involved. A reasonable and just substitute can be provided, affording a ready and efficient system of redress. The Legislature in effectuating such a right was entitled to proceed by more compassionate and clear-cut standards than "who reached the intersection first." The arguments of the appellants do not merit any hearing on the merits by this Court, for they are really addressed to legislative, not judicial considerations. As Mr. Justice Holmes observed in his now vindicated dissent in *Lochner* v. *New York*, 198 U.S. 45 (1905),

> "If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may

regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics."

198 U.S. at 75-76.

B. NO EQUAL PROTECTION VIOLATION.

Appellants next contend that various delineations made in the Act as to which parties retain the negligence cause of action are tantamount to "gross inequality." (Jurisdictional Statement, p. 14). As noted by the Connecticut Supreme Court, however, this question has been resolved in favor of constitutionality in the majority of cases. The general principles are as follows:

" '[T]he Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways, Barbier v. Connolly, 113 U.S. 27 [5 S.Ct. 357, 28 L.Ed. 923] (1885); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 [31 S.Ct. 337, 55 L.Ed. 369] (1911); Railway Express Agency v. New York, 336 U.S. 106 [69 S.Ct. 463, 93 L.Ed. 533] (1949); McDonald v. Board of Election Commissioners, 394 U.S. 802 [89 S.Ct. 1404, 22 L.Ed. 2d 739] (1969) . . . .' "

Reed v. *Reed*, 404 U.S. 71 at 75 (1971).

" '[W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.' . . ."

Louisville Gas & Electric Co. v. *Coleman*, 277 U.S. 32, 41 (1928).

"The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal . . . . With this much discretion, a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489 (1955); and a legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. See Ozan Lumber Co. v. Union County National Bank, 207 U.S. 251 (1907)."

McDonald v. *Board of Election Commissioners*, 394 U.S. 802, 808-809 (1969).

" 'The problems of government are practical ones and may justify, if they do not require, rough accommodations, — illogical, it may be, and unscientific.' "

Metropolis Theatre Co. v. *Chicago*, 228 U.S. 61, 69-70 (1913).

In this case actuarial studies directed by the legislature and cited by the court below justified the threshhold level of $400 for retaining the negligence cause of action. As observed by the Connecticut court:

"The prior unrestricted system of remedy for accident victims has developed into a forensic Medusa. Those approaching it often stood rock hard facing the inevitable delays and uncertainties inherent in contested trials. The concept of general damages has been lost sight of and, in its place, there has emerged a system of frequent over-

compensation for victims with minor injuries, which, in effect, represents the price paid by liability insurers to forgo the long, expensive process of litigation. An unfortunate concomitant of this has been the undercompensation of cases of a truly serious nature. If anything, the act tends to be an equalizer, providing the more seriously injured the opportunity to seek true redress. Certainly, those injured who hover on either side of the $400 threshold may suggest imperfections in this system, in that one who incurs $399.99 in allowable expense fails to satisfy that criterion for exemption, while another incurring $400.01 in expenses is exempted. Yet in every instance where a line must be drawn or a cutoff established there are those who fall directly on either side. This is but one of the vagaries of life to which we accustom ourselves and which we accept in our daily affairs, but we cannot, for this reason, find the act unreasonable in its purpose and overall effect. We rely, instead, on the thought that no matter to which side of the line a party is placed his remedies are sufficient and reasonable."

Jurisdictional Statement, pp. 29A-30A.

C. JURY TRIAL

Appellants' claims as to jury trial are based exclusively upon state constitutional, not federal grounds. See Jurisdictional Statement, p. 14. As this Court stated in another Workmen's Compensation decision:

> "The Seventh Amendment, with its provision for preserving the right of trial by jury, is invoked. It is conceded that this has no reference to proceedings in the state courts (Minneapolis & St. Louis R. R. Co. v. Bombolis, 241 U.S. 211, 217), but it is urged that the question is material for the reason that if the act be constitutional it must be followed in the federal courts in cases that are

> within its provisions. So far as private rights of action are preserved, this is no doubt true; but with respect to those we find nothing in the act that excludes a trial by jury. As between employee and employer, the act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury."

Mountain Timber Co. v. *Washington*, 243 U.S. 219 at 235 (1916).

D. MANDATORY SECURITY

The no-fault system, as noted by the Court below, is a just and reasonable alternative because uniform and appropriate compensation is ensured. Security as an incident of automobile ownership is necessary for this end. There is nothing shocking or novel in such a requirement. Comparable provisions were sustained in the Workmen's Compensation decisions.

> "All reasonable presumptions are in favor of its [the legislation's] validity, and the burden of proof and argument is upon those who seek to overthrow it. . . .
>
> "We are clearly of the opinion that a State, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety, and general welfare of its people, may regulate the carrying on of industrial occupations that frequently and inevitably produce personal injuries and disability with consequent loss of earning power among the men and women employed, and, occasionally, loss of life of those who have wives and children or other relations dependent upon them for support, *and may require that these human losses shall be charged against the industry, either directly, as is done in the case of the act sustained in New York Central R.R. Co.* v. *White, supra, or by publicly administering the compensation and distributing the cost*

among the industries affected by means of a reasonable system of occupation taxes. . . ." (Emphasis added.)

Mountain Timber Co. v. *Washington, supra,* at 237-238, 243-244.

"In excluding the question of fault as a cause of injury, the act in effect disregards the proximate cause and looks to one more remote — the primary cause, as it may be deemed — and that is, the employment itself. For this, both parties are responsible, since they voluntarily engage in it as co-adventurers, with personal injury to the employee as a probable and foreseen result . . . .And it is evident that the consequences of a disabling or fatal injury are precisely the same to the parties affected, and to the community, whether the proximate cause be culpable or innocent. Viewing the entire matter, it cannot be pronounced arbitrary and unreasonable for the State to impose upon the employer the absolute duty of making a moderate and definite compensation in money to every disabled employee, or in case of his death to those who were entitled to look to him for support, in lieu of the common-law liability confined to cases of negligence."

New York Central R.R. Co. v. *White, supra,* at 205.

In the present case, the Act recognizes that since the motoring public derives the benefit of automobile travel, it should bear the incidental expense of providing security. The requirement of spreading the risk over the vast portion of the public may involve some secondary expense. Requiring one to act within reason for his own good when the public interest is affected, however, is nothing revolutionary or capricious.

"'The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer.' Holden v.

Hardy, 169 U.S. 366, 397. It cannot be doubted that the State may prohibit and punish self-maiming and attempts at suicide; it may prohibit a man from bartering away his life or his personal security; indeed, the right to these is often declared, in bills of rights, to be 'natural and inalienable'; and the authority to prohibit contracts made in derogation of a lawfully established policy of the State respecting compensation for accidental death or disabling personal injury is equally clear. Chicago, Burlington & Quincy R.R. Co. v. McGuire, 219 U.S. 549, 571; Second Employers' Liability Cases, 223 U.S. 1, 52 . . . .

"We conclude that the prescribed scheme of compulsory compensation is not repugnant to the provisions of the Fourteenth Amendment, and are brought to consider, next, the manner in which the employer is required to secure payment of the compensation. By § 50, this may be done in one of three ways: (a) state insurance, (b) insurance with an authorized insurance corporation or association, or (c) by a deposit of securities. The record shows that the predecessor of plaintiff in error chose the third method, and, with the sanction of the commission, deposited securities to the amount of $300,000, under § 50, and $30,000 in cash as a deposit to secure prompt and convenient payment, under § 25, with an agreement to make a further deposit if required. This was accompanied with a reservation of all contentions as to the invalidity of the act, and had not the effect of preventing plaintiff in error from raising the questions we have discussed.

"The system of compulsory compensation having been found to be within the power of the State, it is within the limits of permissible regulation, in aid of the system, to require the employer to furnish satisfactory proof of his financial ability to pay the compensation, and to deposit a reasonable amount of securities for that purpose. The third

clause of § 50 has not been, and presumably will not be construed so as to give an unbridled discretion to the commission; nor is it to be presumed that solvent employers will be prevented from becoming self-insurers on reasonable terms . . . .

"This being so, it is obvious that this case presents no question as to whether the State might, consistently with the Fourteenth Amendment, compel employers to effect insurance according to either of the plans mentioned in the first and second clauses. There is no such compulsion, since self-insurance under the third clause presumably is open to all employers on reasonable terms that it is within the power of the State to impose. Regarded as optional arrangements, for acceptance or rejection by employers unwilling to comply with that clause, the plans of insurance are unexceptionable from the constitutional standpoint . . . ."

243 U.S. 206-209.

E. FIFTH AMENDMENT CONSIDERATIONS.

The Court below held that the required reports by the vehicle owner showing a failure to obtain security could not be used as a basis for criminal prosecution for that violation. This interpretation of the act must be deemed authoritative and conclusive. Appellants' contentions merit no further discussion.

CONCLUSION

The Act is a reasonable exercise of the police power of the State of Connecticut. Its basic concepts have been upheld repeatedly in prior decisions of this Court involving comparable legislation. For these reasons, as well as those stated in the brief of the other appellees which we also adopt, it is respectfully submitted that the appeal be dismissed, or, in the alternative, that the judgment be affirmed, pursuant to Rule 16 of the Revised Rules of the Supreme Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barney Lapp, attorney for the appellees, Defendant State Officials, certify that on the 28th day of November, 1975, I served a copy of the foregoing Motion To Dismiss Or Affirm, via first class U.S. Mail, postage prepaid, to the following: Harold J. Geragosian, Esq., 380 West Main Street, New Britain, Connecticut 06052 and Ralph G. Elliot, Esq., One American Row, Hartford, Connecticut 06103.

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